United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

74-2687

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CANDIDO PEREIRA BARREIRA) No. 74-2687
Petitioner)
vs.)
UNITED STATES DEPT. OF)
JUSTICE IMMIGRATION &)
NATURALIZATION SERVICE) Mar. 24,
Respondent) 1975

PETITION FOR REVIEW
BOARD OF IMMIGRATION APPEAL ORDER
BRIEF FOR PETITIONER APPELLANT

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FOR THE SECOND CIRCUIT

CANDIDO PEREIRA BARREIRA, Petitioner v. UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE Respondent	)	No. 74-2687 MARCH 24, 1975

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BOARD OF IMMIGRATION APPEALS ORDER

BRIEF FOR PETITIONER APPELLANT

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STATEMENT OF ISSUE

DID THE BOARD OF IMMIGRATION APPEALS ERR WHEN IT FAILED TO FIND 8 U.S.C. 1241(f) APPLICABLE TO RELIEVE THIS PETITIONER, A PARENT OF U. S. CITIZENS, FROM DEPORTATION?

STATEMENT OF THE CASE

This is an appeal from a decision of the Board of Immigration Appeals dated November 13, 1974. (APP.-5-7). The Board in that decision dismissed the alien petitioner's appeal from an immigration judge's decision dated May 7, 1974 (APP.-16-19).

Specifically on the issue we ask this court to adjudicate, the Board ruled:

> "We find no merit in Counsel's contention that termination under section 241(f) is required. By his own admission, the respondent entered as a non-immigrant visitor. He remained for a longer period than authorized and it was on this basis that the Service alleges deportability. Under these circumstances, the benefit of section 241(f) is not available to him, (citations omitted)."
>
> (APP.-6)

Actually the alien petitioner Barreira, a citizen of Portugal, entered the United States on a non-immigrant B-2 visitor's visa at New York City July 18, 1968, Warrant of Deportation, (APP.-2). Subsequent to that non-immigrant entry, he was subjected to deportation proceedings for overstay, but these deportation proceedings were reopened December 14, 1970 as appears from the fourth

paragraph of the June 7, 1972 Immigration & Naturalization Service letter, (APP.-38).

The reason for the reopening and termination of those 1970 deportation proceedings was that on January 14, 1970 Phoenix H. W. Company of Stratford, Connecticut submitted an I-140, Petition to Classify Preference Status of Alien on Basis of Profession or Occupation, (APP.-38). This sixth preference visa petition under 8 U.S.C. 1153(a)(6), Sec. 203(a)(6) of the Immigration and Nationality Act, was based on Phoenix H. W. Company's intention to hire Barreira as a welder or maintenance mechanic. It was supported by documents purporting to show that Barreira was a meintenance mechanic and welder in Portugal from 1962 until 1968, (APP.-38).

The visa petition was approved by the Hartford office of the Immigration & Naturalization Service January 28, 1970, and an application for adjustment of status to that of lawful permanent resident was filed by the petitioner under 8 U.S.C. 1255, Sec. 245 of the Act, (APP.-38). Thereupon, the 1970 deportation proceedings were reopened and terminated December 14, 1970; the Visa Office of the Department of State issued Visa Number 7334 for the sixth preference category on November 24, 1970 to be used during the month of December, 1970; Barreira was admitted on this immigrant visa as a permanent resident at Hartford December 14, 1970, and a Memorandum of Creation of Record of Lawful

Permanent Residence was established (APP.-36 and 38).

However, the Immigration Service subsequently conducted an extensive inquiry into Barreira's status and established to its satisfaction that he had never been a maintenance mechanic or welder in Portugal. Moreover, Phoenix H. W. Company in Stratford, Connecticut never subsequently hired him nor did Barreira even contact Phoenix H. W. Company, (APP.-39). The Service thereupon concluded that Barreira had secured his sixth preference immigrant visa and his December 14, 1970 admission as a permanent resident through fraud and rescinded that status under 8 U.S.C. 1256, Sec. 246 of the Act, (APP.-37-39).

It repeated this conclusion with respect to Barreira's 1970 fraud and misrepresentations when it failed to grant petitioner a new adjustment of status based on his spouse's visa petition, (APP.-40). The July 11, 1972 rescission of status was never appealed administratively as Barreira had married a United States permanent resident, Isabel Melo, May 27, 1972, (Zampano, J., Memorandum of Decision, APP.-8 and Motion to Reopen Proceedings, APP.-13). Isabel Melo Barreira filed a visa petition for Barreira under 8 U.S.C. 1153(a) (2), Sec. 203(a) (2) of the Act, approved by the Immigration & Naturalization Service at Hartford October 11, 1972. Based on this visa approval the new application for adjustment of status was filed at Hartford, (APP.-41-45), but it was denied January 30, 1973 as indicated above due to

petitioner's previous fraud, (APP.-40).

The petitioner and his wife had two United States citizen children, David M. Barreira born February 29, 1972 and Bridget S. Barreira born February 22, 1973. However, the marriage did not proceed smoothly and the wife instituted dissolution of marriage proceedings in Bridgeport, Connecticut Superior Court, Docket #151466 in late November, 1973, (Motion to Reopen Proceedings, APP.-14). That Dissolution of Marriage action is still pending. At the time the wife instituted the Dissolution of Marriage she withdrew her visa petition, (APP.-14).

Subsequently, on January 22, 1974 a deportation hearing was held before Immigration Judge Cassidy at Hartford, (Transcript of Hearing, APP.-20-35). The immigration judge found petitioner deportable under 8 U.S.C. 1251(a) (2), Sec. 241(a)(2) of the Act, on the ground "that, after admission as a nonimmigrant visitor for a limited time, he remained in the United States for a longer time than permitted." (Decision of the Immigration Judge on Motion, APP.-16). Immigration Judge Cassidy granted petitioner voluntary departure on or before April 1, 1974 (APP.-33) in order for petitioner to be able to explore reconciliation procedures with the wife. No appeal was taken from that January 22, 1974 decision.

There was no reconciliation between the petitioner and his wife, and the Service therefore invoked the alternate

order of deportation after April 1, 1974; but the petitioner moved to reopen the deportation proceedings and to reinstate voluntary departure on April 16, 1974, (APP.-13). Habeas relief in the U. S. District Court was sought to stay deportation, In Re Barreira, Civil No. B-74-146 (D. Conn. May 6, 1974). The immigration judge denied the Motion to Reopen and to Reinstate Voluntary Departure, May 7, 1974, (APP.-16).

The petitioner appealed to the Board of Immigration Appeals May 20, 1974, (APP.-12). The Board treating the matter as coming within Sec. 241(a)(2), Immigration & Naturalization Act, 8 U.S.C. 1251(a)(2), i.e. a non immigrant visitor who remained longer than permitted on November 13, 1974 reinstated voluntary departure for thirty (30) days but denied any relief under Sec. 241(f), 8 U.S.C. 1251(f), (APP.-5-7).

SUMMARY OF ARGUMENT

I. THE IMMIGRATION AND NATURALIZATION SERVICE CANNOT IN 1974 RELITIGATE UNDER 8 U.S.C. 1251(a)(2), SEC. 241(a)(2), I.N.A. THE CHARGE OF PETITIONER'S OVERSTAY ON HIS 1968 VISA, ORIGINALLY CHARGED IN THE 1970 PROCEEDINGS UNLESS IT RELIES ON PETITIONER'S FRAUD AS A BASIS FOR RELITIGATING THE ISSUE.

II. 8 U.S.C. 1251(f) IS APPLICABLE TO THOSE IMMIGRANTS WHO PROCURED VISAS BY FRAUD AND WERE GRANTED ADJUSTMENT OF STATUS UNDER 8 U.S.C. 1255, SEC. 245, I.N.A.

ARGUMENT

I. THE IMMIGRATION AND NATURALIZATION SERVICE CANNOT IN 1974 RELITIGATE UNDER 8 U.S.C. 1251(a)(2), SEC. 241(a)(2), I.N.A. THE CHARGE OF PETITIONER'S OVERSTAY ON HIS 1968 VISA, ORIGINALLY CHARGED IN THE 1970 PROCEEDINGS UNLESS IT RELIES ON PETITIONER'S FRAUD AS A BASIS FOR RELITIGATING THE ISSUE.

The Service in the 1974 deportation proceedings is essentially relitigating the 1970 deportation proceedings brought under 8 U.S.C. 1251(a)(2), Sec. 241(a)(2), I.N.A. Barreira had already overstayed his non-immigrant visa permitted time in 1970. But these 1970 proceedings were reopened and terminated when Barreira's adjustment of status was considered and he was granted an immigrant visa number and admitted as a permanent resident under 8 U.S.C. 1255, Sec. 245, I.N.A.

The Service argues that in having rescinded the 1970 adjustment of status in 1972 for fraud, it can in 1974 proceed to a new deportation proceeding based again on Barreira's overstay of the time permitted him on the 1968 non-immigrant visa. It thus contends that it can administratively wipe out all the events that happened to Barreira after 1970 and revert back and restate the 1970 deportation charges in 1974 again under 241(a)(2).

In this way, the Service seeks to disregard the legal implications involved in Barreira's new admission December 14, 1970 under a sixth preference immigrant visa at Hartford and the fraud it discovered in the obtaining of that visa. When District Director Smith wrote Barreira

June 7, 1972 (APP.-39), he used language taken from 8 U.S.C. 1256(a), Sec. 246(a), I.N.A. stating Barreira was "not in fact eligible for the adjustment of status" December 14, 1970.

To employ the verb of Justice Rehnquist in REID v. I.N.S., --U.S.--, No. 73-1541, decided March 18, 1975, 8 U.S.C. 1256(a), Sec. 246(a) I.N.A., tracks with 8 U.S.C. 1182(a), Sec. 212(a), "the following classes of aliens shall be inelligible to receive visas..." (underlining supplied). 8 U.S.C. 1182(a)(19), Sec. 212(a)(19) makes ineligible and excludible

> "Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact." (underlining supplied).

8 U.S.C. 1256(a), Sec. 246(a), also tracks with 8 U.S.C. 1255(a), Sec. 245(a) which states:

> "(a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted...to that of an alien lawfully admitted for permanent residence if...(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence." (underlining supplied).

All three of these statutes 212(a)(19), 245(a) and 246(a) entered into the language of District Director's Smith June 7, 1972 letter, (APP.-38-39) when he rescinded Barreira's adjustment of status due to Barreira's fraud.

Had this finding of fraud not been made, then Barreira's December 14, 1970 admission as an immigrant permanent resident would still be valid, and the Service would not be concerned with reverting back to the July 18, 1968 admission as a non-immigrant. Had there been no finding of fraud, the 1970 deportation proceedings concerning Barreira's overstay on his 1968 non-immigrant admission would still be terminated. The issues litigated in the December 14, 1970 reopened deportation proceedings would still be administrative res adjudicata.

But the Service did in fact use the fact of the fraud to reconsider the terminated 1970 deportation proceeding and did in 1972 rescind the immigrant status found in those proceedings. Then, in 1974, it sought to reconsider another part of those proceedings, the overstay of the 1968 non-immigrant admission; but this time it did not care to mention the fraud which had been the basis of the 1972 reconsideration. Had it mentioned the fraud in 1974, then 8 U.S.C. 1251(f), Sec. 241(f) would apply.

But can the Service have its cake and eat it too? Does this constitute due process either under the 5th Amendment or under the Administrative Procedure Act? U. S. v UTAH CONSTRUCTION AND MINING CO., 384 U.S. 394, 421-22, 16 L.Ed2d 642, 660-61, 86 S.Ct.1545 (1966) certainly makes the principles of res adjudicata applicable to administrative agencies acting in a judicial capacity. 5 U.S.C. 557 would also be applicable as would the doctrine of collateral estoppel.

The 1970 deportation proceedings started with the Service's charge under 8 U.S.C. 1251(a)(2) that Barreira had overstayed his limited time 1968 non-immigrant admission. Those proceedings were terminated and apparently finally concluded December 14, 1970 when Barreira was admitted on a non-immigrant visa. The only reason for disturbing the finality of the 1970 proceedings was the fraud found in 1972 and relied on by Director Smith in his rescission actions in June and July, 1972. 8 U.S.C. 1256(a), Sec. 246(a) places a five year statute of limitations on such reconsideration.

Comes January, 1974 and the Service starts again at square one. It charges Barreira once more under 8 U.S.C. 1251(a)(2), 241(a)(2) with having overstayed his limited time 1968 non-immigrant admission, but the 1974 deportation charge is strangely silent on the 1972 fraud finding. We contend that such silence cannot be tolerated.

If the Service wishes to relitigate the 1968 visa overstay, first charged in the 1970 proceedings and adjudicated in the petitioner's favor when those proceedings were terminated December 14, 1970, then the Service must allege and rely on the fraud which was the basis employed by it in the 1972 relitigation of part of the 1970 proceedings. The Service must not be permitted to don its administrative blinders as did the Board of Immigration Appeals on the second page of its November 13, 1974 decision saying, "He

remained for a longer period than authorized and it was on this basis that the Service alleges deportability." Constitutional due process, the doctrines of collateral estoppel and res adjudicata together with the Administrative Procedure Act prohibit this result even "in the never-never land of the Immigration and Nationality Act," YUEN SANG LOW v. ATTORNEY GENERAL OF THE UNITED STATES, 479 F2d 820, 821 (1973).

II. 8 U.S.C. 1251(f) IS APPLICABLE TO THOSE IMMIGRANTS WHO PROCURED VISAS BY FRAUD AND WERE GRANTED ADJUSTMENT OF STATUS UNDER 8 U.S.C. 1255, SEC. 245, I.N.A.

As of March 18, 1975, the U. S. Supreme Court has spoken twice on the interpretation of 8 U.S.C. 1251(f), I.N.S. v. ERRICO, 385 U.S. 214, 17 L.E2d 318, 87 S.Ct. 473 (1966) and REID v. I.N.S. --U.S.-- No. 73-1541, March 18, 1975. Neither of these cases concerns fraud in the procurement of admission, as a lawful permanent resident under the adjustment of status procedure of 8 U.S.C. 1255, Sec. 245, I.N.A.

ERRICO concerned an Italian who similarly to Barrei[illegible] in the instant case secured an immigrant visa, but under the pre-1965 law, on the basis of job skill, making false representations that he was a skilled mechanic. But ERRICO did not adjust status after he arrived in the United States. Instead, his first admission was as an immigrant.

Similarly SCOTT in the second half of the ERRICO case entered the United States for the first time as an immigrant

after securing her visa fraudulently by contracting a sham marriage. Her situation also did not involve admission under adjustment of status.

In the March 18, 1975 REID decision emanating from this very circuit, the U. S. Supreme Court found that petitioners, who had made a fraudulent claim to U. S. citizenship and thereby escaped inspection as aliens at entry, did not benefit from 8 U.S.C. 1251(f), 241(f).

REID did not involve adjustment of status, but it did decide that 241(f) benefited only those who made misrepresentations concerning their alienage and not those who made misrepresentations about U. S. citizenship. In that sense, it helps Barreira since his misrepresentations concerned his status as a permanent resident alien and not a spurious U. S. citizenship status.

But in another sense, REID seems more restrictive in its interpretation of 241(f) than was ERRICO. Justice Rehnquist, speaking for the six judge majority in REID, pointed out that the Service charged the petitioners as being deportable under the first phrase of 8 U.S.C. 1251(a)(2), i.e. as having "entered the United States without inspection." Justice Rehnquist wrote that the language of 241(f), 8 U.S.C. 1251(f) tracks with the language of Sec. 212(a)(19), 8 U.S.C. 1182(a)(19) dealing with aliens ineligible to receive visas and excludible for admission.

The Reids by presenting themselves as U. S. citizens did not procure any type of alien visa and escaped inspection. Thus, they were chargeable under Sec. 241(a)(2) as aliens who entered without inspection and therefore deportable.

Now, it is true that in 1974, Barreira was charged by I.N.S. as being deportable under Sec. 241(a)(2), the third phase of that section, in that by overstaying the limited time permitted him on his 1968 visa he remained "in the United States in violation of this chapter..." The I.N.S. in 1974 did not directly charge against Barreira a violation of Sec. 212(a)(19), 8 U.S.C. 1182(a)(19) in that Barreira procured his December 14, 1970 immigrant visa from the State Department by fraud. Instead, the I.N.S. alleged Sec. 241(a)(2) as alleged above.

But, we have argued in Point I of this brief that the I.N.S. had already litigated this Sec. 241(a)(2) charge in the 1970 proceeding and could only reopen and relitigate the old charge by relying on the 1970 fraud perpetrated by Barreira in securing his immigrant visa when the 1970 deportation proceedings and all the issues that could have been litigated therein were closed as of December 14, 1970.

Therefore, to reach the 1968 overstay on the Sec. 241(a)(2) track, the I.N.S. had to travel also on the other Sec. 242(a)(19), 8 U.S.C. 1182(a)(19) track. In that very large sense, Barreira is much more like ERRICO than like REID.

Once, the I.N.S. has to get on the Sec. 242(a)(19) track in order to make Barreira deportable, then Sec. 241(f) 8 U.S.C. 1151(f) becomes applicable to grant the petitioner relief as the parent of two U. S. citizens. REID does not bar such a result in the instant case since Barreira's fraud concerned not U. S. citizenship but fraud in procuring and being eligible for an immigrant visa.

Our research has indicated that only two circuits have considered cases involving aliens who committed fraud in the procuring of visas for adjustment of status, FERRANTE v. I.N.S., 399 Fed 98 (1968), (6 C.C.A.) and KHADJENOURI v. I.N.S., 460 F2d 461 (1972), (9 C.C.A.).

In FERRANTE, the petitioner a citizen of Italy entered the United States August 22, 1960 as a non-immigrant visitor for pleasure. He married an American citizen thereafter who filed a visa petition for him, approved November 7, 1961. His status was adjusted but later rescinded when the marriage was found to be fraudulent. The marriage in question was ended by divorce June 1, 1962. During the time this American citizen was married to Ferrante, she was actually living in a common law relationship with another man.

FERRANTE argued that he could not be held to have entered into a fraudulent marriage for the purpose of securing an immigrant visa as his marriage was void ab initio due to the pre-existing common law marriage of his American wife. If there was no marriage, then it could not be a fraudulent marriage.

Subsequently, FERRANTE in 1965 married a naturalized American citizen. This second wife filed a petition, and the immediate relative visa petition was granted, but then revoked due to FERRANTE'S fraud on the first marriage.

FERRANTE argued that if the I.N.S. found his first marriage fraudulent and rescinded his admission as a permanent resident in adjustment of status proceedings, then he was entitled to relief under Sec. 241(f), 8 U.S.C. 1251(f) as he was now the spouse and father of U. S. citizens. Without considering the part of Sec. 1251(f) which makes excludable "aliens who have sought to procure or have procured visas or other documentation...by fraud or misrepresentation," the 5th Circuit stated that 8 U.S.C. 1251(f) only applied to those aliens excludable at entry, and since FERRANTE had entered legally as a visitor for pleasure, he could not come under that section.

In KHADJENOURI v. I.N.S., v.s. the 9th Circuit two man majority relied on FERRANTE in a short three paragraph order of affirmance saying there was a difference between fraud after entry and fraud to obtain entry. But Circuit Judge Trask in a vigorous dissenting opinion pointed out that adjustment of status and entry are functional equivalents and therefore 8 U.S.C. 1251(f) should be held to apply to the second adjustment of status entry.

Judge Trask cited AMARANTE v. ROSENBERG, 326 F2d 58 (1964) (9 C.C.A.), AMBRA v. AHRENS, 325 F2d 468 (1970) (5 C.C.A.) and CAMPOS v. I.N.S., 402 F2d 758 (1968) (9 C.C.A.) for the

proposition that adjustment of status and entry are functional equivalents. He also cited 2 Gordon and Rosenfeld, IMMIGRATION LAW & PROCEDURE, Sec. 7.7(e)(1).

However, even Judge Trask's dissent does not go into that part of 8 U.S.C. 1251(f) missed in FERRANTE as indicated above. 8 U.S.C. 1251(f) not only exempts aliens who have secured entry by fraud. The section quoted above exempts aliens who have secured visas or other documentation by fraud.

Under 8 U.S.C. 1255, Sec. 245, the adjustment of status section, as we indicated earlier, the alien must be "eligible to receive an immigrant visa" and "an immigrant visa" must be "immediately available to him at the time his application is approved."

Barreira committed fraud in procuring Visa No. 7334 from the State Department in December, 1970 (APP.-36). This is the reason why District Director Smith rescinded the adjustment of status under 8 U.S.C. 1256, Sec. 246 and 8 U.S.C. 1182(a)(19), Sec. 212(a)(19) as an alien who was ineligible for a visa and excludible, because again in the language of 212(a)(19) he "seeks to procure, or has sought to procure, or has procured a visa or other documentation..., by fraud."

Thus, even assuming arguendo, that Barreira's December 14, 1970 adjustment of status was not a new "entry" and that his only "entry" was on July 18, 1968, still to achieve adjustment of status Barreira had to procure visa 7334 or the Portugese documentation of his work skills and experience

by fraud, and it was that fraud which caused the rescission of status and the reinstatement of the 1968 tourist visa overstay charges. That section of Sec. 212(a)(19) and 241(f) is still applicable.

But we do not rely only on this part of the argument concerning procuring of visa or other documentation by fraud. We rely also, as we pointed out earlier on the rationale employed by Judge Trask in KHADJENOURI, supra. In that respect, we wish to call the court's attention to GOOCH v. CLARK, 433 F2d 74 (1970) (9 C.C.A.). That case involved an attempt by labor unions to stop the flow of Mexican and Canadian daily commuters coming over the border to work in the United States. These commuters before the 1965 amendments had become fully operational, had secured status as U. S. permanent residents and had been given "green cards" by the I.N.S. indicative of that status.

Although these "U. S. permanent residents" actually lived in Mexico and Canada, the I.N.S. with the approval of the 9th Circuit treated them as "permanent residents returning from temporary visits abroad" each day and weekends to their own homes under 8 U.S.C. 1101(a)(27)(B). The court stated on page 79,

> "We agree with the Government that the definition (permanent resident) refers not to the actuality of one's residence but to one's status under the immigration laws."
>
> GOOCH v. CLARK, 433 F2d 74, 79

Then on page 78, the court said, "That phrase" lawfully admitted for permanent residence" is itself a term of art .

"Lawfully admitted for permanent resident" is in fact a term of art, and the history of the law and the cases we have cited certainly show that it is the equivalent of an entry into the United States. The I.N.S. itself when it grants adjustment of status to an alien as one who is "lawfully admitted for permanent" residence confers upon him the "green card" as a cachet of that new entry and new status; and it stamps on that card the date of his adjustment of status as the date of his entry or admission. The "green card" given to the alien whose status is adjusted is exactly the same as that given to the alien who enters as an immigrant at a traditional port of entry. The only difference is that the port of entry marked on the green card of the alien who has adjusted status in the city where the I.N.S. office is located. Thus Barreira's green card showed that his port of entry was Hartford.

BUFALINO v. I.N.S., 473 F2d 728 (1973) (3 C.C.A.) sheds some light on one aspect of the matter. The I.N.S. brought charges to deport BUFALINO, a reputed Mafia boss, on the grounds that (1) he failed to file annual alien reports and (2) he entered the U. S. after short visits to Cuba and Bimini respectively, each time evading inspection by claiming to be a citizen. In this second charge the Service relied on the same section of the statute employed in REID, 8 U.S.C.

241(a)(2), the first phrase of that section, entry without inspection.

It is that aspect which is relevant here. The government chose as a ground of deportation entries subsequent to BUFALINO'S first entry into the country as a basis for deportability. For the government's purposes, it made BUFALINO deportable for two entries after short business or vacation trips to Bimini and Cuba.

In the instant Barreira case, however, the Service would have us disregard the entry made by Barreira at Hartford December 14, 1970 when he adjusted status and go back only to his original innocent entry as a non-immigrant for a limited time. But the government forgave any overstay of his first innocent entry on December 14, 1970 when it permitted a new entry and adjustment of status.

It is really the new entry of December 14, 1970 which the government is now attacking. And the service is attacking it precisely because it was fraudulent. Since it was fraudulent, Barreira is entitled to relief under 8 U.S.C. 1251(f) as the father of U. S. citizens.

CONCLUSION

The Service and the Board of Immigration Appeals were incorrect in simply treating the 1974 deportability charges as concerning Barreira's overstay of his 1968 visitors visa. That issue was settled by the December, 1970 adjust-

ment of status and could only be relitigated on the basis of fraud in procuring an immigrant visa and entry as of December 14, 1970. Because of that fraud, Barreira as the father of two U. S. citizens is eligible for relief under Sec. 241(f), 8 U.S.C. 1151(f).

THE PETITIONER APPELLANT
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BY _____
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